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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,638	03/18/2004	Volker Buhren	TRAUMA 3.0-454	5367
530 7590 08/13/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER SHAFFER, RICHARD R	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 08/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/803,638	<b>Applicant(s)</b> BUHREN ET AL.	
	<b>Examiner</b> Richard R. Shaffer	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/17/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The amendments to the claims filed on May 17<sup>th</sup>, 2006 are acknowledged by the examiner. The previous 35 U.S.C. 112, first and second paragraph rejections are hereby withdrawn.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-10, 16-20 and 22-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Independent claims 1 and 16 recite the limitation "parallel to or co-linear with the bone contacting surface." The specification as originally filed did not specify that the recess within the load-bearing elements were parallel to the bone-contacting surface. Further, since the recess is clearly not along a line defined by the bone-contacting surface, it is impossible for the surface to be "co-linear." Further, claim 1 recites "a multi-section internal portion complimentary to an internal surface of the opening." The internal portion (12) of applicant's insert is clearly not complimentary to the inner portion of the elongated opening. All dependent claims are rejected for being dependent upon base claims reciting new matter.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haag et al (US Patent 5,976,141) in view of Richelsoph (US Patent 6,017,345).

Haag et al disclose a device (**Figures 1-8**) comprising: an elongated load-bearing element/plate (**100**) having an opening (**101**); the opening (**101**) having an outwardly facing surface (**102** or **104** depending upon orientation) that tapers inward towards the bone contacting surface (**105** or **103** depending upon orientation); multiple (**Column 3, Lines 22-25**) elongated (as can be seen in **Figure 1** and described in **Column 3, Lines 1-2**) insert (**301**) with a form (see **Figures 3-6**) generally complementary to the recessed outwardly facing surface (**102**); the insert exhibiting a central through-bore (**310**) with a non-normal inclined axis (**313**) relative to the principal plane of the load-bearing element/plate (**100**); a fixation element (**200**); the insert exhibits locking mechanisms to lock with the internal surface of the load-bearing element/plate (**100**); the locking mechanism/insert having an extension (either groove corresponding to **23, Figure 2** or groove (**321**) and projections (portions corresponding to either tapered section immediately adjacent **23, Figure 2**).

Haag et al fail to disclose two parallel sidewalls in the opening (101), which are perpendicular to the outwardly facing and bone contacting surfaces as well as a bottom surface generally parallel to the bone-contacting surface to receive projections from the insert (301). Richelsoph teaches (Figures 1-15) an insert (28) with a projecting base (34) to be positioned within a rectangular recess (13) within a bone plate. This was to lock the insert within the bone plate, which is the same objective of Haag et al's design. It would have been obvious to one having ordinary skill in the art at the time the invention was made to merely substitute either design to provide for a quick locking mechanism when desiring the use of inserts within bone plates.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 3733

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

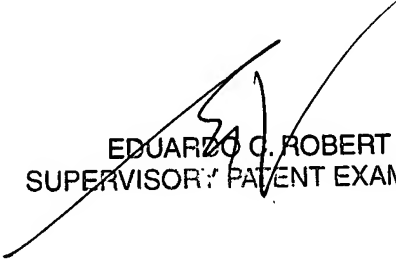
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard Shaffer  
August 3<sup>rd</sup>, 2007



EDUARDO C. ROBERT  
SUPERVISOR, PATENT EXAMINER